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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,377	02/04/2008	Nigel Boast	031280-000020	8851
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Nixon Peabody LLP P.O. Box 60610 Palo Alto, CA 94306			EXAMINER MCKANE, ELIZABETH L.	
			ART UNIT	PAPER NUMBER
			1797	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/593,377

Applicant(s)

BOAST ET AL.

Examiner

ELIZABETH L. MCKANE

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-17 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-17 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni (US 2004/0202570) in view of Palermo (US 6,481,219), Cumberland (WO 03/089017), and Thomsen (US 2004/0047776).

Nadkarni teaches a method of sterilizing a closed environment wherein the method includes restricting access to the closed environment (para [0031] and [0042]), generating gaseous ozone into the environment at a concentration of 1-100 ppm (para [0036]), increasing the humidity of the closed environment (para [0028]), maintaining the ozone for a predetermined time period (para [0036] and [0041]), and depleting the ozone using a kiln (para [0041]). Nadkarni further discloses that after "[o]n reaching the safe ozone concentration, independent testing company personnel enter the sealed area...." (paragraph [0042]). Thus, there is an inherent step of "signaling" that the safe ozone concentration has been achieved, through detectors or other known means. The safe ozone concentration is disclosed to be "no more than 0.08 ppm." See para [0036].

As set forth above, Nadkarni discloses the use of ozone having a concentration of 1-100 ppm for an "effective time". See paragraph [0036]. As both concentration and

contact time are known result effective variables, it would have been obvious to one of ordinary skill in the art to optimize a known result effective variable in order to optimize treatment parameters according to economics and contamination level. Optimization of such variables is well-within the purview of one in the art in the absence of unexpected results.

Although Nadkarni discloses destroying the gaseous ozone after treatment with a kiln and/or scrubber, Nadkarni is silent with respect to use of a catalytic converter for destruction of the ozone. Palermo evidences that it was known in the art at the time of the invention to use a catalytic converter for the conversion of ozone back to oxygen at the end of an ozone sterilization cycle. See col.3, lines 9-11. Specifically, Palermo discloses an ozone destroyer **90** which can be a thermal destroyer, like that of Nadkarni, or alternatively a catalytic converter where the catalyst is manganese dioxide or activated carbon. See col.5, lines 24-30. Such catalysts reduce the ozone concentration to less than 1 ppm (col.5, lines 34-36). As Palermo teaches that a catalytic converter is capable of reducing the ozone concentration to very low levels and moreover, is a functional equivalent of the thermal means of Nadkarni, it would have been obvious to one of ordinary skill in the art to substitute the catalytic converter of Palermo for the kiln of Nadkarni.

Nadkarni utilizes a portable, truck-mounted apparatus (para [0025]) which is not insertable into the closed environment. Nadkarni is also silent with respect to selecting a room size from a menu of standard options. Cumberland, however, teaches a portable, wheeled ozone generator for treatment of closed environments. See Figure 1

and page 19, line 34 to page 20, line 16. The closed environments can include rooms in hospitals, ships, apartment buildings, office buildings, and schools. See page 16, lines 2-4. As Cumberland further discloses that the wheeled cart of Figure 1 is a functional equivalent of a truck-mounted apparatus (page 21, lines 6-7), it would have been obvious to supply the apparatus of Nadkarni on a wheeled cart, in the manner of Cumberland, when treating smaller spaces. Cumberland further teaches optimization of the process based upon treatment conditions, including the volume of space being treated (page 11, line 26; page 17, lines 19-21 and 33-36). The size/volume of the target space can be determined beforehand and the computer can control the target dosage based on the size of the target space. This target dose is disclosed to be stored in a lookup table stored in the computer's memory. See page 19, lines 10-14; page 20, lines 18-22. Thus, the target dose is directly related to the target space size/volume. As Cumberland already discloses the use of a computer to automate the ozonation process and a method of treating standard size rooms (hospitals, ships, etc.), it would have been obvious to use look-up tables to facilitate selection of target space size/volume.

Nadkarni is silent with respect to activating a timer by the user, after the expiry of which the ozone generator begins operation. Thomsen teaches that it was known in the art at the time of the invention to use a delay timer for an ozone generator in order to "provide time for the operator to leave the vicinity of the unit 10". See para [0092]. It would have been obvious to one of ordinary skill in the art to use such a timer in the method of the combination for the same purpose.

3. Claims 12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni, Palermo, Cumberland, and Thomsen as applied to claim 11 above, and further in view of Hannant (EP 0693289).

With respect to claim 12, Nadkarni is silent with respect to how the signaling is accomplished. Hannant discloses a sterilization system wherein a remote unit 2 signals the end of the sterilization cycle as well as any fault conditions. See Abstract. The signal can be in the form of a light 25 or other visible display and/or an audible alarm 24. See page 2, line 55 to page 3, line 6. As both visible and audible signals are well-known in the art of sterilization, their use would have been both obvious and expected in the combination above.

As to claims 14 and 15, Nadkarni discloses treatment of "any type of building or vessel such as a ship" (para [0017]). Thus, one of ordinary skill in the art would have found it obvious to apply the method of Nadkarni to the treatment of any building/vessel or part thereof in need of sterilization.

With respect to claim 16, while Nadkarni teaches that when the entire building/vessel is being treated the ventilation system can be used to circulate the ozone throughout the building. However, when treating only a single area of the building, it would have been obvious to seal the area, as taught by Nadkarni, and to keep the ventilation system turned off, in order to prevent unwanted circulation of the ozone to parts of the building/vessel outside of the area being treated.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni, Palermo, Cumberland, and Thomsen as applied to claim 11 above, and further in view of Braun, Jr. (US 2003/0127506).

The combination supra teaches the known use of visual signaling means in a sterilization system. LEDs are not specified. However, Braun, Jr. discloses a sterilization system wherein LEDs **50,52** are used to indicate both current state and failure of the system. See paragraphs [0033] and [0040]. As LEDs would have been a well-known type of visual signaling means, their use would have been obvious in the invention of the combination.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni (US 2004/0202570) in view of Thomsen.

With respect to claim 17, Nadkarni teaches a sterilizer including a humidifier **12**, a gaseous ozone generation means **36**, an ozone depletion means **40**, a movement means **18**, and detectors for the ozone concentration and humidity (para [0015]). Nadkarni is silent with respect to a timer which delays activation of the ozone generator. Thomsen teaches that it was known in the art at the time of the invention to use a delay timer for an ozone generator in order to "provide time for the operator to leave the vicinity of the unit **10**". See para [0092]. It would have been obvious to one of ordinary skill in the art to use such a timer in the method of the combination for the same purpose.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni and Thomsen as applied to claim 18 above, and further in view of Palermo.

Although Nadkarni discloses an ozone depletion means (kiln and/or scrubber), the reference is silent with respect to use of manganese dioxide. Palermo evidences that it was known in the art at the time of the invention to use a catalytic converter for the conversion of ozone back to oxygen at the end of an ozone sterilization cycle. See col.3, lines 9-11. Specifically, Palermo discloses an ozone destroyer **90** which can be a thermal destroyer, like that of Nadkarni, or alternatively a catalytic converter where the catalyst is manganese dioxide. See col.5, lines 24-30. Such catalysts reduce the ozone concentration to less than 1 ppm (col.5, lines 34-36). As Palermo teaches that a catalytic converter is capable of reducing the ozone concentration to very low levels and moreover, is a functional equivalent of the thermal means of Nadkarni, it would have been obvious to one of ordinary skill in the art to substitute the catalytic converter of Palermo for the kiln of Nadkarni.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni, Thomsen, and Palermo as applied to claim 19 above, and further in view of Cumberland.

As to system of Nadkarni is truck-mounted, it does not include a handle. Cumberland, however, teaches a portable, wheeled ozone generator for treatment of closed environments having a handle to assist with pushing the apparatus. See Figure 1 and page 19, line 34 to page 20, line 16. As Cumberland further discloses that the wheeled cart of Figure 1 is a functional equivalent of a truck-mounted apparatus (page

21, lines 6-7), it would have been obvious to supply the apparatus of Nadkarni on a wheeled cart, in the manner of Cumberland, when treating smaller spaces.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni, Thomsen, Palermo, and Cumberland as applied to claim 20 above, and further in view of Hannant.

Nadkarni is silent with respect to a particular signaling means. Hannant discloses a sterilization system wherein a remote unit 2 signals the end of the sterilization cycle as well as any fault conditions. See Abstract. The signal can be in the form of a light 25 or other visible display and/or an audible alarm 24. See page 2, line 55 to page 3, line 6. As both visible and audible signals are well-known in the art of sterilization, their use would have been both obvious and expected in the combination above.

9. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nadkarni, Thomsen, Palermo, Cumberland, and Hannant as applied to claim 20 above, and further in view of Braun, Jr..

With respect to claim 22, the above combination discloses the known use of visual signaling means in a sterilization system. LEDs are not specified. However, Braun, Jr. discloses a sterilization system wherein LEDs 50,52 are used to indicate both current state and failure of the system. See paragraphs [0033] and [0040]. As LEDs would have been an well-known type of visual signaling means, their use would have been obvious in the invention of the combination.

As to claim 23, Palermo discloses an ozone destroyer **90** which can be a thermal destroyer, like that of Nadkarni, or alternatively a catalytic converter where the catalyst is activated carbon. See col.5, lines 24-30. Such catalysts reduce the ozone concentration to less than 1 ppm (col.5, lines 34-36). As Palermo teaches that a catalytic converter is capable of reducing the ozone concentration to very low levels and moreover, is a functional equivalent of the thermal means of Nadkarni, it would have been obvious to one of ordinary skill in the art to substitute the catalytic converter of Palermo for the kiln of Nadkarni.

Response to Arguments

10. Applicant's arguments with respect to the new claims have been considered but are moot in view of the new ground(s) of rejection.
11. Applicant argues that neither Nadkarni nor Palermo consider portability at all. However, Cumberland does and the Examiner has provided motivation to combine Nadkarni with Cumberland, as Cumberland evidences that trunk-mounted and portable units are functional equivalents. Furthermore, although Applicant argues that Cumberland does not teach standard locations, the Examiner submits that given Cumberland's teaching to automate the process through the use of computer look-up tables and to treat rooms within a school, hospital, or ship, it would have been obvious to one of ordinary skill in the art to use menu options to facilitate user operation of the device.

12. As to Applicant's comments concerning a delay timer, this is a new limitation addressed by Thomsen.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH L. MCKANE whose telephone number is (571)272-1275. The examiner can normally be reached on Mon-Fri; 5:30 a.m. - 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

elm
9 July 2010